
ENGROSSED SUBSTITUTE HOUSE BILL 1317

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Kirby, Grant, Quall, Shabro, Jarrett, Rockefeller, Hunt, Delvin, Morris and Conway; by request of Governor Locke)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to the trust water rights program; amending RCW
2 90.42.005, 90.42.010, 90.42.020, 90.42.030, 90.03.380, and 90.44.100;
3 adding new sections to chapter 90.42 RCW; creating a new section;
4 repealing RCW 90.42.050, 90.42.070, and 90.42.080; and declaring an
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that the trust water
8 rights program is an important tool in meeting the state's current and
9 future needs for water, both instream and out-of-stream. However, the
10 legislature finds that the existing procedures for establishing trust
11 water rights are unnecessarily complex, and are difficult to explain
12 and administer. Further, the legislature finds that groups currently
13 developing local watershed plans and regional water management programs
14 are seeking an effective means to facilitate multiple, voluntary
15 transfers of existing water rights to address presently unmet needs and
16 future needs.

17 It is the intent of this act to enhance the effectiveness of the
18 trust water rights program by improving existing incentives, removing

1 disincentives, and clarifying and consolidating procedures for
2 establishing trust water rights.

3 **Sec. 2.** RCW 90.42.005 and 1991 c 347 s 1 are each amended to read
4 as follows:

5 (1) It is the policy of the state of Washington to recognize and
6 preserve water rights in accordance with RCW 90.03.010 and the
7 beneficial uses of water described in RCW 90.54.020(1).

8 (2) The legislature finds that:

9 (a) The state of Washington is faced with a shortage of water with
10 which to meet existing and future needs, particularly during the summer
11 and fall months and in dry years when the demand is greatest;

12 (b) Consistent with RCW 90.54.180, conservation and water use
13 efficiency programs, ~~((including))~~ storage, and water right transfers
14 should be the preferred methods ~~((of addressing water uses because they~~
15 ~~can relieve))~~ to address current critical water situations, provide for
16 presently unmet needs, and assist in meeting future water needs.
17 Presently unmet needs or current needs includes the water required to
18 increase the frequency of occurrence of base or minimum flow levels in
19 streams of the state, the water necessary to satisfy existing water
20 rights, or the water necessary to provide full supplies to existing
21 water systems with current supply deficiencies, or as otherwise needed
22 to meet the needs of growing communities for adequate and reliable
23 water supplies, and to provide the water necessary to satisfy existing
24 water rights for other beneficial uses listed in RCW 90.54.020(1);
25 ~~((and))~~

26 (c) The interests of the state will be served by developing
27 programs and regional water resource plans, in cooperation with local
28 governments, federally recognized tribal governments, appropriate
29 federal agencies, private citizens, and the various water users and
30 water interests in the state, that increase the overall ability to
31 manage the state's waters in order to resolve conflicts and to better
32 satisfy both present and future needs for water, both instream and
33 out-of-stream; and

34 (d) A state trust water rights program is an effective means to
35 facilitate the voluntary transfer of water and water rights,
36 established through conservation, purchase, lease, or donation, to

1 secure and preserve water rights and provide water for presently unmet
2 needs and emerging needs.

3 **Sec. 3.** RCW 90.42.010 and 1998 c 245 s 173 are each amended to
4 read as follows:

5 The legislature (~~((finds that))~~) recognizes a need (~~((exists))~~) to
6 (~~((develop and test))~~) provide a means to facilitate the voluntary
7 transfer of water and water rights, including conserved water, to
8 provide water for presently unmet needs and emerging needs.
9 (~~((Further,))~~) The legislature also finds that water conservation
10 activities have the potential of affecting the quantity of return flow
11 waters to which existing water right holders have a right to and upon
12 which they rely (~~((upon))~~). (~~((It is the intent of))~~) The legislature
13 intends that persons holding rights to water, including return flows,
14 not be adversely affected in the implementation of the provisions of
15 this chapter.

16 **Sec. 4.** RCW 90.42.020 and 1991 c 347 s 6 are each amended to read
17 as follows:

18 (~~((Unless the context clearly requires otherwise,))~~) The definitions
19 in this section apply throughout this chapter unless the context
20 clearly requires otherwise.

21 (1) "Department" means the department of ecology.

22 (2) "Impairment" means detriment or injury to existing rights as
23 that phrase is used in RCW 90.03.380(1).

24 (3) "Net water savings" means the amount of water that is
25 determined to be conserved and usable within or from a specified
26 (~~((stream reach or reaches))~~) surface or ground water body for other
27 purposes without impairment (~~((or detriment))~~) to water rights existing
28 at the time that a water conservation project is (~~((undertaken, reducing~~
29 ~~the ability to deliver water, or reducing the supply of water that~~
30 ~~otherwise would have been available to other existing water uses))~~)
31 funded.

32 (~~((3))~~) (4) "Trust water right" means any existing water right
33 (~~((acquired))~~) transferred to or managed by the state under this chapter
34 (~~((for management in))~~) and the state's trust water rights program.

35 (~~((4))~~) ~~"Pilot planning areas" means the geographic areas designated~~
36 ~~under RCW 90.54.045(2).)~~

1 (5) "Water conservation project" means any project or program for
2 which the state provides state or federal government assistance that
3 achieves physical or operational improvements that provide for
4 increased water use efficiency in existing systems of diversion,
5 conveyance, application, or use of water under water rights (~~(existing~~
6 ~~on July 28, 1991)~~)).

7 **Sec. 5.** RCW 90.42.030 and 1993 c 98 s 2 are each amended to read
8 as follows:

9 (1) For the purposes ((of)) specified in this chapter, the state
10 may enter into contracts to provide moneys to assist in the financing
11 of water conservation projects. In consideration for the financial
12 assistance provided, the state shall obtain public benefits (~~(defined~~
13 ~~in guidelines developed under RCW 90.42.050)~~) in the form of temporary
14 or permanent water rights.

15 (2) If the public benefits to be obtained require conveyance or
16 modification of a water right, the recipient of funds shall convey to
17 the state the recipient's interest in that part of the water right (~~(or~~
18 ~~claim))~~) constituting all or a portion of the resulting net water
19 savings (~~(for deposit in the trust water rights program. The amount to~~
20 ~~be conveyed shall be finitely determined by the parties, in accordance~~
21 ~~with the guidelines developed under RCW 90.42.050, before the~~
22 ~~expenditure of state funds)~~) according to section 8 of this act.
23 Conveyance may consist of complete transfer, lease contracts, or other
24 legally binding agreements. When negotiating for the acquisition of
25 conserved water or net water savings, or a portion thereof, the state
26 may require evidence of a valid water right.

27 (3) (~~(As part of the contract,)~~) If requested by the water right
28 holder ((and)), the state shall specify (~~(the process to determine))~~) as
29 part of the contract the amount of water the water right holder would
30 continue to be entitled to once the water conservation project is in
31 place.

32 (4) (~~(The state shall cooperate fully with the United States in the~~
33 ~~implementation of this chapter. Trust water rights may be acquired~~
34 ~~through expenditure of funds provided by the United States and shall be~~
35 ~~treated in the same manner as trust water rights resulting from the~~
36 ~~expenditure of state funds.~~

1 ~~(5) If water is proposed to be acquired by or conveyed to the state~~
2 ~~as a trust water right by an irrigation district, evidence of the~~
3 ~~district's authority to represent the water right holders shall be~~
4 ~~submitted to and for the satisfaction of the department.~~

5 ~~(6) The state shall not contract with any person to acquire a water~~
6 ~~right served by an irrigation district without the approval of the~~
7 ~~board of directors of the irrigation district. Disapproval by a board~~
8 ~~shall be factually based on probable adverse effects on the ability of~~
9 ~~the district to deliver water to other members or on maintenance of the~~
10 ~~financial integrity of the district.))~~ When the department provides
11 funding for a water conservation project as a means of establishing a
12 trust water right, a trust water right must be established for the
13 period of time during which the conservation project will result in
14 establishment of a trust water right. For example, a conservation
15 project with a functional life of fifteen years would result in a trust
16 transfer of fifteen years. Before the expenditure of state funds for
17 a water conservation project, the state and the water right holder
18 shall agree on the terms and duration of the trust water transfer as a
19 result of a conservation project.

20 NEW SECTION. Sec. 6. A new section is added to chapter 90.42 RCW
21 to read as follows:

22 (1) All trust water established by the state must be placed in the
23 state trust water rights program to be held in trust by the department.
24 Trust water rights established by the state must be held or authorized
25 for use by the department for any beneficial use described in RCW
26 90.54.020(1). Trust water rights may also be established for the
27 protection of water rights secured for mitigation purposes and for
28 preservation of water rights for future needs.

29 (2) Trust water rights may only be established from existing water
30 rights, including rights to divert or withdraw water under existing
31 certificates, claims, and permits, and rights to storage and use of
32 stored water from existing reservoir and secondary use rights, or other
33 appropriate means other than by condemnation.

34 (3) Trust water rights must be administered by the department.
35 Each trust water right must be administered in strict accordance with
36 the terms under which the trust water right was established, including
37 any agreement between the parties executed at the time the trust water

1 right was established, or as subsequently modified by mutual agreement
2 of the parties. For example, a trust water right established by the
3 state expressly conditioned to limit its use to instream flows must be
4 managed as a trust water right in compliance with that condition.

5 (4) To the extent practicable and subject to legislative
6 appropriation, trust water rights established in a watershed with an
7 approved watershed plan developed under chapter 90.82 RCW must be used
8 in a manner consistent with that plan.

9 (5) The department may make arrangements, including entry into
10 contracts with other persons or entities as appropriate, to ensure that
11 trust water rights established in accordance with this chapter can be
12 exercised to the fullest possible extent consistent with applicable
13 state laws.

14 (6) The department shall cooperate fully with the United States in
15 the implementation of this chapter. Trust water rights may be
16 established through expenditure of funds provided by the United States
17 and must be treated in the same manner as trust water rights
18 established as a result of the expenditure of state funds.

19 (7) All trust water rights must be managed to ensure that
20 attributes of each water right, such as its priority date, status as a
21 certificate, permit, or claim, names or numbers used to identify the
22 water right, and previously authorized uses remain distinct for each
23 water right established as a trust water right.

24 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.42 RCW
25 to read as follows:

26 (1) A trust water right may be established on a temporary or
27 permanent basis. To establish a permanent trust water right, the water
28 right must be conveyed to the state of Washington. A water right
29 transferred to the trust water program on a temporary basis may not be
30 conveyed to the state of Washington and remains the property of the
31 water right holder while managed by the department in the trust water
32 program consistent with the terms of any agreement between the water
33 right holder and the department.

34 (2) All or a portion of a water right perfected through actual
35 beneficial use or an unperfected water right in good standing can be
36 established as a trust water right. Once established by the state,
37 such a right is a trust water right.

1 (3) The department shall develop forms for use in the establishment
2 of trust water rights to gather information pertaining to the water
3 right including, but not limited to, the existing purpose, place of
4 use, and point of diversion or withdrawal of the right, extent of water
5 use under the right, and the use or uses proposed for the right as a
6 trust water right.

7 (4) Except as provided in RCW 90.03.380(4) and 90.44.100(5), the
8 provisions of RCW 90.03.380 and 90.44.100 apply to trust water right
9 transfers under this chapter.

10 (5) Acceptance of an existing right as a temporary trust water
11 right under this chapter does not constitute a determination of the
12 validity and extent of an existing water right.

13 (6) If the holder of a right to water from a body of water chooses
14 to donate all or a portion of the person's water right to the trust
15 water program to assist in providing instream flows on a temporary or
16 permanent basis, the department shall accept the donation on such terms
17 as the person may prescribe as long as the donation satisfies the
18 applicable requirements of this chapter, and the terms prescribed are
19 relevant and material to protecting any interest in the water right
20 retained by the donor. Once accepted, such rights are trust water
21 rights within the conditions prescribed by the donor.

22 (7)(a) The quantity of water that may be approved for transfer to
23 the trust water program represents the extent to which water use under
24 the original right is reduced or foregone under the trust transfer,
25 resulting in a net benefit to the water body as a result of
26 establishing the trust water right, and resulting from:

27 (i) Reduced diversion or withdrawal of water under the original
28 right as a result of a water conservation project;

29 (ii) A reduction in the number of acres irrigated under the right,
30 or a long-term change in the type of crop grown that will require less
31 water;

32 (iii) A reduction in the period of use of the right, on a seasonal
33 basis, during periods of low stream flows, or according to conditions
34 prescribed for the trust water right;

35 (iv) The elimination of water use under the original right;

36 (v) A downstream change in point of diversion of a water right that
37 results in increased flows in the reach of the stream affected by the
38 change;

1 (vi) The temporary or permanent use of different source of supply
2 to meet all or a portion of the water needs under the original right;
3 or

4 (vii) Other appropriate changes in activities under the original
5 right, as agreed to between the water right holder and the department.

6 (b) Where the state establishes a trust water right from a portion
7 of an existing water right, only the portion of the right to be placed
8 in the trust water rights program is subject to the provisions of this
9 chapter. In the case of a trust transfer, the quantity of the trust
10 water right and the water right remaining with the water right holder
11 is reflected in the superseding document issued to the water right
12 holder by the department, and the superseding document issued by the
13 department must be conditioned to ensure that the reduced water use is
14 achieved.

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.42 RCW
16 to read as follows:

17 (1) A trust water right retains the same priority date as the water
18 right from which it originated. The trust right shall be deemed to be
19 inferior in priority to the water right from which it originated unless
20 otherwise specified by an agreement between the state and the party
21 holding the original right.

22 (2) The priority date of an unperfected water right established as
23 a trust water right is the date of its establishment as a trust water
24 right. If an unperfected water right is established as a temporary
25 trust water right, it reverts to the original owner as an unperfected
26 right with the priority date of the original right.

27 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.42 RCW
28 to read as follows:

29 (1) Before acquiring, establishing, or modifying any trust water
30 right, the department shall publish a notice in a newspaper of general
31 circulation published in the county or counties in which the storage,
32 diversion, and use are to be made and in other newspapers as the
33 department determines is necessary. The notice must be published once
34 a week for two consecutive weeks. At the same time the department
35 publishes notice, the department shall send a notice containing

1 pertinent information to all appropriate state agencies, potentially
2 affected local governments, potentially affected federally recognized
3 tribal governments, and other interested parties.

4 (2) This section does not apply to a trust water right resulting
5 from a donation for instream flows under RCW 90.42.080 or from a lease
6 under RCW 90.42.080 if the period of the lease does not exceed five
7 years.

8 (3) The department shall establish expedited notice provisions to
9 provide notice and opportunity for comment on proposals to establish
10 trust water rights during a formally declared drought.

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.42 RCW
12 to read as follows:

13 (1) Except as provided in subsection (2) of this section, a
14 temporary trust water right is established after the following actions
15 occur:

16 (a) The water right holder provides written notice to the
17 department of their intention to establish a temporary trust water
18 right;

19 (b) The water right holder publishes a legal notice according to
20 section 9 of this act describing the temporary trust transfer and other
21 details deemed necessary by the department. The legal notice must
22 state that a water right holder wishing to assert a claim of impairment
23 of their water right may do so by filing the claim with the department,
24 and shall specify the deadline for doing so. The legal notice must be
25 published once a week for two consecutive weeks in a newspaper of
26 general circulation in the area in which the temporary trust water
27 right would be established; and

28 (c) Within thirty days of the last date of publication of the legal
29 notice, no claims of impairment are filed with the department relating
30 to the proposed temporary trust water right. If any claims of
31 impairment are filed with the department, the department shall make a
32 determination regarding the impairment claim or claims and shall issue
33 its determination in writing, stating either that it finds that there
34 will be impairment (a "finding of impairment") or that it finds there
35 will not be impairment (a "finding of no impairment"). The
36 department's written determination may be appealed to the pollution

1 control hearings board as provided in chapter 43.21B RCW or other
2 applicable law.

3 (2) A temporary trust water right may be established by a superior
4 court conducting a water rights adjudication under chapter 90.03 RCW.

5 (3) Upon the expiration of the period of time for which a temporary
6 trust water right is established, the full perfected and unperfected
7 quantities of water established as a temporary trust water right revert
8 to the water right holder, with the priority date of the original water
9 right.

10 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.42 RCW
11 to read as follows:

12 (1)(a) After notice and consideration of comments received, the
13 department shall issue a final decision regarding the establishment of
14 a permanent trust water right.

15 (b) The department shall provide copies of its final decision to
16 the applicant and to any person or entity who provided comments on the
17 proposed permanent trust water right transfer. The department's final
18 decision on establishment of a permanent trust water right is
19 appealable to the pollution control hearings board under RCW 43.21B.230
20 or other applicable law.

21 (2) The department shall issue a certificate of change or transfer
22 as required under RCW 90.03.380(1) for any water right established as
23 a permanent trust water right and order approving a trust water right
24 transfer. Certificates of change or transfer issued under RCW
25 90.03.380 must be filed and made a record with the department of
26 ecology, and a duplicate certificate must be issued to the applicant,
27 which may be filed with the appropriate county auditor in like manner
28 and with the same effect as provided in the original authorization to
29 divert water.

30 (3) The department may require a final investigation prior to
31 issuing a superseding certificate for water rights for which the
32 department has issued a certificate of change or transfer under this
33 section and under RCW 90.03.380(1), and shall issue a superseding
34 certificate for such water right only when and to the extent water has
35 been applied to actual beneficial use as described in the certificate
36 of change or transfer issued under RCW 90.03.380(1).

1 (4) Where only a portion of an existing right is established as a
2 permanent trust water right, the department shall issue a superseding
3 certificate or permit to the original water right holder or, with
4 respect to water claims, issue a superseding certificate or permit only
5 for the perfected portion of a claim as demonstrated through actual
6 beneficial use of water. The superseding document must indicate the
7 quantity of water remaining with the original right holder.

8 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.42 RCW
9 to read as follows:

10 No state funds may be expended to establish trust water rights by
11 the state under this chapter unless specifically appropriated for this
12 purpose by the legislature. Prior to expending state or federal funds
13 for a trust water right, the department shall exercise appropriate due
14 diligence, as practiced by other water right purchasers, to ensure the
15 validity of the water right or portion thereof for which the funds will
16 be expended.

17 NEW SECTION. **Sec. 13.** A new section is added to chapter 90.42 RCW
18 to read as follows:

19 A water right conveyed to the trust water right program as a
20 donation that is expressly conditioned to limit its use to instream
21 purposes must be managed by the department for public purposes to
22 ensure that it qualifies as a donation that is deductible for federal
23 income taxation purposes for the person or entity conveying the water
24 right.

25 NEW SECTION. **Sec. 14.** A new section is added to chapter 90.42 RCW
26 to read as follows:

27 The water right relinquishment provisions of RCW 90.14.130 through
28 90.14.230 do not apply to trust water rights as of the date the trust
29 water right is established.

30 NEW SECTION. **Sec. 15.** A new section is added to chapter 90.42 RCW
31 to read as follows:

32 (1) Nothing in this chapter authorizes the impairment of, or
33 operates to impair, any existing water rights.

1 (2) A trust water right may be established only if the department
2 first determines that neither water rights existing at the time the
3 trust water right is established nor the public interest will be
4 impaired. If impairment becomes apparent during the time a trust water
5 right is being exercised, the department shall cease or modify the use
6 of the trust water right to eliminate the impairment.

7 (3) A water right holder who believes his or her water right has
8 been impaired by a trust water right donated or leased under RCW
9 90.42.080 may request that the department review his or her impairment
10 claim. If the department determines that exercising the trust water
11 right resulting from the donation or lease or exercising a portion of
12 that trust water right is impairing existing water rights in violation
13 of this section, the trust water right must be altered by the
14 department to eliminate the impairment.

15 (4) Any decision of the department made according to subsection (2)
16 or (3) of this section may be appealed to the pollution control
17 hearings board according to chapter 43.21B RCW.

18 NEW SECTION. **Sec. 16.** A new section is added to chapter 90.42 RCW
19 to read as follows:

20 (1) When water is proposed to be provided to the department as a
21 trust water right by an irrigation district, evidence of the district's
22 authority to represent the water right holders must be submitted to,
23 and for the satisfaction of, the department.

24 (2) The department may not establish a trust water right from an
25 individual's water right under this chapter that is appurtenant to land
26 lying within an irrigation district without the approval of the board
27 of directors of the irrigation district.

28 **Sec. 17.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read
29 as follows:

30 (1) The right to the use of water which has been applied to a
31 beneficial use in the state shall be and remain appurtenant to the land
32 or place upon which the same is used: PROVIDED, HOWEVER, That the
33 right may be transferred to another or to others and become appurtenant
34 to any other land or place of use without loss of priority of right
35 theretofore established if such change can be made without detriment or
36 injury to existing rights. The point of diversion of water for

1 beneficial use or the purpose of use may be changed, if such change can
2 be made without detriment or injury to existing rights. A change in
3 the place of use, point of diversion, and/or purpose of use of a water
4 right to enable irrigation of additional acreage or the addition of new
5 uses may be permitted if such change results in no increase in the
6 annual consumptive quantity of water used under the water right. For
7 purposes of this section, "annual consumptive quantity" means the
8 estimated or actual annual amount of water diverted pursuant to the
9 water right, reduced by the estimated annual amount of return flows,
10 averaged over the two years of greatest use within the most recent
11 five-year period of continuous beneficial use of the water right.
12 Before any transfer of such right to use water or change of the point
13 of diversion of water or change of purpose of use can be made, any
14 person having an interest in the transfer or change, shall file a
15 written application therefor with the department, and the application
16 shall not be granted until notice of the application is published as
17 provided in RCW 90.03.280. If it shall appear that such transfer or
18 such change may be made without injury or detriment to existing rights,
19 the department shall issue to the applicant a certificate in duplicate
20 granting the right for such transfer or for such change of point of
21 diversion or of use. The certificate so issued shall be filed and be
22 made a record with the department and the duplicate certificate issued
23 to the applicant may be filed with the county auditor in like manner
24 and with the same effect as provided in the original certificate or
25 permit to divert water.

26 (2) If an application for change proposes to transfer water rights
27 from one irrigation district to another, the department shall, before
28 publication of notice, receive concurrence from each of the irrigation
29 districts that such transfer or change will not adversely affect the
30 ability to deliver water to other landowners or impair the financial
31 integrity of either of the districts.

32 (3) A change in place of use by an individual water user or users
33 of water provided by an irrigation district need only receive approval
34 for the change from the board of directors of the district if the use
35 of water continues within the irrigation district, and when water is
36 provided by an irrigation entity that is a member of a board of joint
37 control created under chapter 87.80 RCW, approval need only be received

1 from the board of joint control if the use of water continues within
2 the area of jurisdiction of the joint board and the change can be made
3 without detriment or injury to existing rights.

4 (4) The requirements of this section ((shall)) do not apply to
5 trust water rights ((acquired by the state through the funding of water
6 conservation projects under chapter 90.38 RCW or RCW 90.42.010 through
7 90.42.070)) established on a temporary basis under chapter 90.42 RCW
8 unless such rights are transferred to another person.

9 (5)(a) Pending applications for new water rights are not entitled
10 to protection from impairment, injury, or detriment when an application
11 relating to an existing surface or ground water right is considered.

12 (b) Applications relating to existing surface or ground water
13 rights may be processed and decisions on them rendered independently of
14 processing and rendering decisions on pending applications for new
15 water rights within the same source of supply without regard to the
16 date of filing of the pending applications for new water rights.

17 (c) Notwithstanding any other existing authority to process
18 applications, including but not limited to the authority to process
19 applications under WAC 173-152-050 as it existed on January 1, 2001, an
20 application relating to an existing surface or ground water right may
21 be processed ahead of a previously filed application relating to an
22 existing right when sufficient information for a decision on the
23 previously filed application is not available and the applicant for the
24 previously filed application is sent written notice that explains what
25 information is not available and informs the applicant that processing
26 of the next application will begin. The previously filed application
27 does not lose its priority date and if the information is provided by
28 the applicant within sixty days, the previously filed application shall
29 be processed at that time. This subsection (5)(c) does not affect any
30 other existing authority to process applications.

31 (d) Nothing in this subsection (5) is intended to stop the
32 processing of applications for new water rights.

33 (6) No applicant for a change, transfer, or amendment of a water
34 right may be required to give up any part of the applicant's valid
35 water right or claim to a state agency, the trust water rights program,
36 or to other persons as a condition of processing the application.

37 (7) In revising the provisions of this section and adding
38 provisions to this section by chapter 237, Laws of 2001, the

1 legislature does not intend to imply legislative approval or
2 disapproval of any existing administrative policy regarding, or any
3 existing administrative or judicial interpretation of, the provisions
4 of this section not expressly added or revised.

5 **Sec. 18.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
6 as follows:

7 (1) After an application to, and upon the issuance by the
8 department of an amendment to the appropriate permit or certificate of
9 ground water right, the holder of a valid right to withdraw public
10 ground waters may, without losing the holder's priority of right,
11 construct wells or other means of withdrawal at a new location in
12 substitution for or in addition to those at the original location, or
13 the holder may change the manner or the place of use of the water.

14 (2) An amendment to construct replacement or a new additional well
15 or wells at a location outside of the location of the original well or
16 wells or to change the manner or place of use of the water shall be
17 issued only after publication of notice of the application and findings
18 as prescribed in the case of an original application. Such amendment
19 shall be issued by the department only on the conditions that: (a) The
20 additional or replacement well or wells shall tap the same body of
21 public ground water as the original well or wells; (b) where a
22 replacement well or wells is approved, the use of the original well or
23 wells shall be discontinued and the original well or wells shall be
24 properly decommissioned as required under chapter 18.104 RCW; (c) where
25 an additional well or wells is constructed, the original well or wells
26 may continue to be used, but the combined total withdrawal from the
27 original and additional well or wells shall not enlarge the right
28 conveyed by the original permit or certificate; and (d) other existing
29 rights shall not be impaired. The department may specify an approved
30 manner of construction and shall require a showing of compliance with
31 the terms of the amendment, as provided in RCW 90.44.080 in the case of
32 an original permit.

33 (3) The construction of a replacement or new additional well or
34 wells at the location of the original well or wells shall be allowed
35 without application to the department for an amendment. However, the
36 following apply to such a replacement or new additional well: (a) The
37 well shall tap the same body of public ground water as the original

1 well or wells; (b) if a replacement well is constructed, the use of the
2 original well or wells shall be discontinued and the original well or
3 wells shall be properly decommissioned as required under chapter 18.104
4 RCW; (c) if a new additional well is constructed, the original well or
5 wells may continue to be used, but the combined total withdrawal from
6 the original and additional well or wells shall not enlarge the right
7 conveyed by the original water use permit or certificate; (d) the
8 construction and use of the well shall not interfere with or impair
9 water rights with an earlier date of priority than the water right or
10 rights for the original well or wells; (e) the replacement or
11 additional well shall be located no closer than the original well to a
12 well it might interfere with; (f) the department may specify an
13 approved manner of construction of the well; and (g) the department
14 shall require a showing of compliance with the conditions of this
15 subsection (3).

16 (4) As used in this section, the "location of the original well or
17 wells" is the area described as the point of withdrawal in the original
18 public notice published for the application for the water right for the
19 well.

20 (5) The requirements of this section do not apply to trust water
21 rights established on a temporary basis under chapter 90.42 RCW unless
22 such rights are transferred to another person.

23 NEW SECTION. Sec. 19. The following acts or parts of acts are
24 each repealed:

25 (1) RCW 90.42.050 (Guidelines governing trust water rights--
26 Submission of guidelines to joint select committee) and 1991 c 347 s 9;

27 (2) RCW 90.42.070 (Involuntary impairment of existing water rights
28 not authorized) and 1991 c 347 s 11; and

29 (3) RCW 90.42.080 (Trust water rights--Acquisition, donation,
30 exercise, and transfer--Appropriation required for expenditure of
31 funds) and 2002 c 329 s 9, 2001 c 237 s 31, 1993 c 98 s 4, & 1991 c 347
32 s 12.

33 NEW SECTION. Sec. 20. If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 21.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

--- END ---